IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 199 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARESHKUMAR H SHIKOTRA

Versus

LAKHABHAI K MARADIYA

Appearance:

1. Civil Revision Application No. 199 of 1990

MR PM THAKKAR for Petitioner No. 1

MR SURESH M SHAH for Respondent No. 1

MR MEHUL S SHAH for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 09/04/2004

ORAL JUDGEMENT

This is a revision application filed under Section 29 (2) of the Bombay Rent Act by the defendant of

Regular Civil Suit No.5/1982. The said suit was filed by the respondent herein for getting decree for possession on the ground of arrears of rent as well as on the ground of nonuser of the suit premises. The case of the plaintiff is that the defendant was in arrears of rent for a period from 1-1-1980 to 31-12-1981 and in spite of the demand notice, the defendant failed to pay up the rent and ultimately, said suit was filed for getting decree for possession on the ground of arrears of rent as well as on the ground of nonuser of the suit premises by the defendant. The trial Court dismissed the said suit, against which the respondent herein filed an appeal before the District Court being Regular Civil Appeal No.74/1983. Before the appellate Court, only point which was canvassed by the landlord was regarding nonuser of the suit premises as contemplated by Section 13 (1) (k) of the Bombay Rent Act. The appellate Court after appreciating the evidence on record came to the conclusion that the tenant has not used the suit premises and no satisfactory ground is given for such nonuser by the tenant. Therefore, the appellate Court decreed the said suit on the ground of nonuser as per provisions of Section 13 (1) (k) of the Rent Act. It is this order, which is impugned in the present Civil Revision Application.

2) Mr.R.V.Dagli, learned advocate appearing on behalf of Thakkar Associates for the petitioner states that the landlord had already taken away the possession of the suit premises about 11 years back and at present his client is not not even responding to him. He submitted that as per the instruction received by him from the landlord, the shop in question is demolished by the landlord 11 years back after taking over the possession. He submitted that he has written a letter to his client in this behalf but his client is not responding. Copy of the said letter which was written to his client is kept on record.

3) So far as question of nonuser is concerned, the appellate Court has considered the evidence and came to the conclusion that the tenant had taken away material in connection with carpentry business, which he was doing in the suit premises and the suit premises is kept closed from three years prior to the institution of the suit. The appellate Court has also found in para 9 of the order that the defendant has stated in his evidence in examination-in-chief that he has closed his carpentry business before four years as he could not make the payment of electricity bill and electricity connection was disconnected. The tenant, thereafter, stated that he

was doing tailoring business. The appellate Court, however, found that no such case was put up even in the written statement that he was doing tailoring business and no such stand was taken even in the reply to the notice which was given by the landlord. After appreciating the evidence on record, as a whole, the appellate Court found that the case of nonuser is proved by the landlord and accordingly, decree for possession was passed. Even regarding tailoring business, it is specifically found in para 9 by the appellate Court that the tenant has not led any evidence to show that he is doing tailoring business as he does not keep any account books, he does not maintain measurement book and he has not obtained license for carrying on the said business.

4) Therefore, in my view, the finding of fact given by the appellate Court about nonuser is not required to be disturbed by this Court in a revision under Section 29 (2) of the Bombay Rent Act and it cannot be said that the appellate Court has committed any error of law in deciding the said appeal. Therefore, I do not find any substance in this revision and the same is required to be rejected.

5) Accordingly, this Civil Revision Application is rejected. Rule is discharged. No costs.

(P.B.Majmudar,J.)

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